

ADULT GUARDIANSHIP: WHAT DOES IT MEAN TO ME?

By the Law Office of Jeffrey M. Janeiro, P.L.

As individuals age, it can become more and more difficult to manage personal or financial affairs. At the Law Office of Jeffrey M. Janeiro, P.L. it is our goal to help individuals prepare for this stage of life and make the transition as smooth and comfortable as possible.

Why would I need a guardian?

In the event you become incapacitated and are no longer able to care for yourself or make financial decisions, a guardian may be appointed to assist with such tasks. By planning ahead and considering your options, you can ensure that the person taking on this important responsibility is someone you truly trust.

Who can be my guardian?

This is an issue which should be discussed now, while you are still able to consider who you trust to look after your personal and financial affairs. It is a good idea to have a conversation with your friends and family members to ensure they are able and willing to take on this responsibility. For example, your guardian must be a resident of this state unless he or she is related to you through blood, adoption or marriage. See section 744.309 of Florida Statutes.

Does this mean I no longer have any rights or control?

There are various types of guardianships depending on the level of a person's incapacity. A guardianship could be plenary, meaning all delegable right will be given to the guardian. Those rights include: the right to contract, sue and defend lawsuits, apply for government benefits, manage property or make any gift or disposition of property, determine your residence, consent to medical and mental health treatment, and make decisions about your social environment or other social aspects of life.

However, a court may also determine that only a limited guardian is necessary. This means the guardian will have authority to exercise only certain rights which the court determines you are no longer capable of exercising for yourself.

There are also some rights which may be taken away but cannot be delegated to any guardian. Those rights include, but are not limited to, the right to marry, the right to vote, the right to have a driver license, the right to travel and the right to seek or retain employment.

And finally, there are some rights which you will retain, even if you are determined to be incapacitated and a guardian has been appointed over you. Such rights include, being represented by an attorney, review of the need for restriction of your rights, restoration of capacity at the earliest possible time and remaining as independent as possible. See section 744.3215 of Florida Statutes. We want your wishes to be heard with respect to where and under what conditions you want to live.

Are there alternatives to guardianship?

Of course. The first step is having advanced directives in place, such as a Durable Power of Attorney or Healthcare Surrogate. In some cases, those documents alleviate the need for a guardianship. In other cases, a Declaration of Preneed Guardian is also important. Additionally, a Revocable Living Trust can reduce the need for a guardianship.

Please contact our office today to meet with a guardianship attorney and start preparing for a better future.

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